IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 550 OF 2005

Vasant Pandharinath Jambukar ... Appellant

V/s

Vijaykumar Popatlal Shah ... Respondent

Mr. G.S. Godbole for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 4TH AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Pune, dated 25.6.2004 allowing the appeal and decreeing the suit of the plaintiff for recovery of the amount and setting aside the impugned order passed by the Civil judge, Sr.Divn., Pune, dated 23.7.1993, dismissing the suit of the plaintiff for recovery of the amount.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintff has filed the suit against the

defendant for the recovery of the amount of Rs.60,000/-. It is an admitted position that the parties are well acquainted with each other and plaintiff is carrying on business of cloth merchant at Chakan. At the request of the defendant, the plaintiff advanced an amount of Rs.56,000/- to defendant as hand loan for which defendant acknowledged the said amount and agreed to repay the same within two months. At that time, defendant gave cheque of Rs.56,000/- drawn on State Bank of India, Chakan Branch. He gave cheque towards the repayment of said loan, however, the defendant was to repay the amount within stipulated period. On expiry of two months, plaintiff demanded the amount and the cheque was presented in the bank but was dishonoured and notice was issued but in vain. Hence the suit came to be filed.

4. The defendant contested the suit on the ground that though he had issued the cheque as well as the receipt as a contemporaneous document, he did not receive the consideration and, as such, the suit was sought to be dismissed.

5. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff did

not prove that he had given hand loan of Rs.56,000/- to the defendant and the document executed between the parties were without consideration and, as such, the suit came to be dismissed.

The appeal was carried to the lower appellate Court. The lower Appellate Court Judge, after hearing both sides on merits, allowed the appeal and decreed the suit. Hence the present appeal.

6. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The lower appellate Court has observed that, admitted position was not that the cheque as well as the receipt Exh.32 were executed by the defendant and in order to rebutt the presumption which is raised under Sec. 118 of the Negotiable Instruments Act, the defendant entered into witness box submitting that he did not receive the consideration. However, the evidence in rebuttal was found to be inadequate and it was held, in my view, correctly that the plaintiff had proved his case in toto.

7. The learned counsel for the appellant took me through the judgment of the Trial Court, which is relied

upon the Apex Court ruling in the case of **Kundan Lal Rallaram v/s Custodian, Evacuee Proper, Bombay, reported in A.I.R. 1961 SC 1316**, and on the basis of the ratio laid down by the said ruling, has come to the conclusion that the defendant has successfully rebutted the presumption under Sec. 118 of the Negotiable Instruments Act, however, I prefer to disagree with the said proposition and hold that the learned lower appellate Court Judge has rightly concluded that the evidence on record led on behalf of the defendant was not sufficient to rebut the presumption under the Negotiable Instruments Act and, as such, the decree came to be passed in favour of the plaintiff.

8. In the result, I do not see any reason for interference in the order passed by the lower appellate Court Judge and dismiss the appeal. Hence, the appeal stands dismissed with no order as to costs.

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